

## **Chapter 170**

### **SHELLFISH CONSERVATION**

#### **GENERAL REFERENCES**

**Port and harbor — See Ch. 153.**

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#### **§ 170-1. Authority.**

This chapter is enacted in accordance with 12 M.R.S.A. § 6671.

#### **§ 170-2. Purpose.**

The purpose of this chapter is to establish a shellfish conservation program for the Town of Bar Harbor that will ensure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means including:

- A. Licensing;
- B. Limiting the number of shellfish harvesters;
- C. Restricting the time and area where digging is permitted;
- D. Limiting the minimum size of clams taken; and
- E. Limiting the amount of clams taken daily by a harvester.

#### **§ 170-3. Marine Resources Committee.**

- A. The shellfish conservation program for the Town of Bar Harbor will be administered by the Marine Resources Committee, consisting of seven members to be appointed by the Town Council for staggered terms of three years.
- B. Committee's responsibilities. The Committee's responsibilities include:
  - (1) Establishing annually, in conjunction with the Maine Department of Marine Resources, the number of shellfish digging licenses to be issued.
  - (2) Surveying each clam-producing area at least once each three years to establish size distribution and density and annually to estimate the status of the Town's shellfish resources.
  - (3) Submitting to the Town Council proposals for the expenditure of funds for the purpose of shellfish conservation.
  - (4) Keeping this chapter under review and making recommendations for its amendment.
  - (5) Securing and maintaining records of shellfish harvest from the Town's managed shellfish areas and closed areas that are conditionally opened by the

Department of Marine Resources.

- (6) Recommending conservation closures and openings to the Town Council in conjunction with the area biologists of the Department of Marine Resources.
- (7) Submitting an annual report to the municipality and the Department of Marine Resources covering the above topics and all other Committee activities.
- (8) Submitting to the Town Council proposals for ordinances that affect land use in areas where shellfish beds will be impacted.
- (9) Submitting to the Town Council proposals for ordinances that affect water use in areas where shellfish beds will be impacted.
- (10) Supporting water quality monitoring efforts by local citizen and school groups that are working with the Maine Department of Marine Resources in areas where shellfish beds are located. This includes but is not restricted to:
  - (a) Assisting with selection of monitoring sites;
  - (b) Attending training sessions;
  - (c) Participating in water sample collection;
  - (d) Assisting with watershed surveys;
  - (e) Submitting to the Town Council proposals for the expenditure of funds for the purpose of addressing water quality related issues;
  - (f) Working with the Conservation Commission to evaluate water quality data; and
  - (g) Making recommendations to the Town Council for changes in land or water use practices that are impacting shellfish beds.

#### **§ 170-4. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**JUNIOR** — A person who is under 18 on the first day of the licensing period. **[Added 7-21-2020 by Ord. No. 2020-10]**

**NONRESIDENT** — Anyone not qualified as a resident under this chapter.

**RESIDENT** — A person who has been domiciled in this municipality for at least three months immediately prior to the time his/her claim of such residence is made.

**SHELLFISH and CLAMS** — Soft-shell clams, *Mya arenaria*.

#### **§ 170-5. Licensing.**

A. Generally.

- (1) License required. It is unlawful for any person to dig or take shellfish from this municipality without having a current license issued by this municipality as provided by this chapter.

- (2) License fees waived. Resident recreational shellfish license fees will be waived for residents over 65 and under 16 years of age.
- (3) State commercial license. A commercial shellfish harvester must have a valid commercial shellfish license issued by the Maine Department of Marine Resources. This license does not need to be purchased prior to purchase of the Town license.

B. Designation, scope and qualifications.

- (1) Resident commercial shellfish license. The license is available to residents of the Town of Bar Harbor. It entitles the holder to dig, take or possess any amount of shellfish from the shores and flats of this municipality, except where lower limits have been established for certain areas.
- (2) Nonresident commercial shellfish license. The license is available to nonresidents of this municipality. It entitles the holder to dig, take or possess any amount of shellfish from the shores and flats of this municipality, except where lower limits have been established for certain areas.
- (3) Resident junior commercial license. This license is available to any resident, who has attained his or her 13th birthday, but has not yet attained their 18th birthday as of the first day of the current licensing year. This license entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality, except where lower limits have been established for certain areas. **[Added 7-21-2020 by Ord. No. 2020-10<sup>1</sup>]**
- (4) Nonresident junior commercial license. This license is available to any nonresident, who has attained his or her 13th birthday but has not yet attained their 18th birthday as of the first day of the current licensing year. This license entitles the holder to harvest and take any amount of shellfish from the shores and flats of this municipality, except where lower limits have been established for certain areas. **[Added 7-21-2020 by Ord. No. 2020-10]**
- (5) Resident recreational shellfish license. The license is available to residents and real estate taxpayers of this municipality and reciprocating municipalities. It entitles the holder to dig, take or possess no more than one peck of shellfish in any one day for personal use. This license is not available, nor valid, to holders of a Maine commercial shellfish license.
- (6) Nonresident recreational shellfish license. The license is available to any person not a resident of this municipality. It entitles the holder to dig, take or possess not more than one peck of shellfish in any one day for personal use. This license is not available, nor valid, to holders of a Maine commercial shellfish license.
- (7) All shellfish licenses. It shall be unlawful for an individual to possess any Bar Harbor shellfish license if their state shellfish harvesters license is under suspension or revocation for any reason for the period of state suspension at a

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1. Editor's Note: This ordinance also redesignated former Subsection B(3) through (8) as Subsection B(5) through (10), respectively.

minimum.

- (8) License must be signed and consent to inspection. In order for a Town shellfish license to be valid, it must be signed. Any person who signs a Town shellfish license has a duty to submit to inspection and search for violations related to the licensed activity by the Town Shellfish Warden or other Law Enforcement Officer under the following conditions:
    - (a) Watercraft or vehicles and the equipment located on watercraft or vehicles which are used primarily during shellfish harvesting activity may be searched or inspected at any time if the Shellfish Warden or other Law Enforcement Officer has a reasonable suspicion of a violation of the Town Shellfish Conservation Ordinance by the licensed individual.
  - (9) Conservation time requirements for commercial shellfish license. No commercial license shall be issued until the applicant has completed the minimum number of mandatory conservation hours. Qualifying conservation time includes attending Marine Resources Committee meetings, clam flat population and recruitment surveys, reseeding and any other approved activity. Any member of the Bar Harbor Marine Resources Committee may verify hours for approved activities. The minimum required conservation hours will be established by the Marine Resources Committee at least six months prior to current license expiration date. Conservation time must be accumulated in the previous licensing year; however, if an individual obtains the appropriate conservation time, but is unable to obtain a commercial license, their conservation time will rollover to the next year or until they are offered a license to the next year or until they are offered a license. Conservation time requirements are waived for anyone 16 and under at the end of the previous licensing year. **[Amended 7-21-2020 by Ord. No. 2020-10]**
  - (10) Commercial license eligibility. Individuals possessing Bar Harbor commercial shellfish harvesting licenses for four of the previous five years and who have accumulated the required conservation time are eligible to obtain their licenses two weeks in advance of the next license year. The Marine Resources Committee shall determine the number of advance licenses available for the next year no later than six months in advance. If the number of eligible individuals exceeds the number of advance licenses available, those licenses shall be assigned through a lottery. Any licenses not issued before the first working day of the new license year will be available to any eligible individual that has met the conservation time requirement. **[Amended 6-18-2019 by Ord. No. 2019-08]**
- C. Application procedure. Any person may apply to the Town Clerk, on a form provided by the municipality, for the licenses required by this chapter.
- (1) Contents of the application. The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature, number of conservation hours and any other information the municipality may require.
  - (2) Misrepresentation. Any person who gives false information on a license application will cause said license to become invalid.

- D. Fees. Fees for the various classifications of licenses shall be established by the Town Council from time to time. License fees must accompany in full an application for any license. The Town Clerk shall transfer all fees received to the Town Treasurer. Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation and enforcement. Fifty cents may be retained by the Town Clerk's office, or a designated agent, at point of purchase.
- E. Limitation of diggers. Because the shellfish resources are limited and a commercial or recreational digger can be expected to harvest a certain volume of clams per year, the number of diggers must be controlled. This number will vary from year to year depending upon estimates of the resource capabilities and management requirements consistent with good resource utilization. The following procedures will be followed to exercise the control:
- (1) Number of licenses established. Prior to May 1 the Town Marine Resources Committee, with the approval of the Maine Commissioner of Marine Resources, will establish the number of commercial and recreational licenses to be permitted following the requirements of 12 M.R.S.A. § 6671(3-A).
  - (2) Notice to Town Clerk. Prior to June 1 the Town Marine Resources Committee will notify the Town Clerk in writing of the number of licenses to be issued.
  - (3) Public notice. Not less than 10 days prior to the period of issuance notice of the number of licenses to be issued and the procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, effective in reaching persons affected. Notice shall also be posted in the municipal offices until the period of issuance concludes.
  - (4) Limited license sales. The number of licenses issued may be limited and will be issued according to the Municipal License Allocation Request as approved by DMR. The Town Clerk shall issue licenses to residents and nonresidents as allocated for the first 90 days of the period of issuance after which any unsold licenses shall be made available to residents and nonresidents alike on a first-come-first-served basis or by lottery, at the approved fee per available license class. **[Added 7-21-2020 by Ord. No. 2020-10<sup>3</sup>]**
  - (5) Unlimited license sales. When the Shellfish Conservation Committee determines limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year, it can change to unlimited license sales within a category. The Town Clerk shall issue licenses as allocated. On the first day of license sales, the total number of nonresident commercial licenses shall be issued in accordance with DMR Regulations Chapter 7.4, Section 1. Thereafter, nonresident licenses will be issued in accordance with the 10% rule as described in 12 M.R.S.A. § 6671, Subdivision 3E, and DMR Regulations Chapter 7.4, Section 2, Table 1. **[Added 7-21-2020 by Ord. No. 2020-10]**
  - (6) Dates of issuance. The Town Clerk shall issue licenses as allocated from the first day of July. Categories with limited license sales shall be offered until the

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2. Editor's Note: This ordinance also redesignated former Subsection E(4) as Subsection E(6).

28th day of September, after which licenses in these categories shall be issued to residents and nonresidents on a first-come-first-served basis. **[Amended 7-21-2020 by Ord. No. 2020-10]**

- F. License expiration date. Each license issued under the authority of this chapter expires at midnight on the 30th day of June following the date of issue.
- G. Suspension. Any shellfish licensee convicted of a violation of this chapter shall have his/her shellfish license automatically suspended for a period of 30 days. Any subsequent conviction shall result in loss of shellfish license for one year.
  - (1) Reapplication. A licensee whose shellfish license has been suspended pursuant to this chapter may reapply for a license only after the suspension period has expired.
  - (2) Effective date of suspension. The suspension shall be effective from the date of mailing of a notice of suspension by the Town Clerk to the licensee.

**§ 170-6. Opening and closing of harvest areas. [Amended 8-4-2015 by Ord. No. 2015-02]**

The Town Council, upon the approval of the Maine Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendation of the Marine Resources Committee and concurrence by the Maine Department of Marine Resources area biologist that the status of the shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Marine Resources Committee presents the recommendation to Town Council. Town Council may vote to approve or deny the change in status at that time, or call a public hearing on 10 days' notice published in a newspaper having general circulation in the Town, stating the time, place and subject matter of the hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Town Council shall be based on findings of fact. Once Council has approved the recommended change in clam flat status, application will be made to the Maine Department of Marine Resources for state approval.

**§ 170-7. Limitation on clams to be taken.**

- A. Definitions. As used in this section, the following terms shall have the meanings indicated:
  - LOT — The total number of soft-shell clams in any bulk pile. Where soft-shell clams are in a box, barrel or other container, the contents of each box, barrel or other container constitutes a separate lot.
  - NIGHT DIGGING — The taking of shellfish during the period from 30 minutes after sunset to 30 minutes before sunrise.
  - POSSESS — Dig, take, harvest, ship, transport, hold, buy and sell, retail or wholesale, soft-shell clam shell stock.
- B. Tolerance. Any person may possess soft-shell clams that are less than two inches if they comprise less than 10% of any lot. The tolerance shall be determined by numerical count of not less than one peck nor more than four pecks taken at random

from various parts of the lot or by a count of the entire lot if it contains less than one peck.

- C. Night digging. Shellfish harvesting in Bar Harbor is limited to the period from 30 minutes before sunrise to 30 minutes after sunset, with no night digging of soft-shell clams allowed except by special permit.

**§ 170-8. Violations and penalties.**

A person who violates this chapter shall be punished as provided by 12 M.R.S.A. § 6671(6-A) and (10).

**§ 170-9. When effective.**

This chapter has been approved by the Maine Commissioner of Marine Resources. Section 170-5B(8) of this chapter, Commercial license eligibility, shall become effective January 1, 2013, with the balance of this chapter effective 30 days following its adoption by the Town Council, provided that a certified copy of this chapter is filed with the Commissioner within 20 days of its adoption.

